

CALIFORNIA ARTS COUNCIL 2007-08 GRANT AGREEMENT

EXHIBIT D – SPECIAL TERMS AND CONDITIONS

1. STATEMENT OF THE GRANT

Grantee agrees to furnish the California Arts Council (CAC) with a Grant Description and Budget (henceforth referred to as budget) describing the activities to be supported by this grant. Budget must include a column detailing expenditure of CAC grant funds and a separate column detailing expenditure of matching funds.

This grant requires a dollar-for-dollar match: \$1 of CAC funds matched by \$1 of other non-State funds. This source(s) of matching funds must also be identified, in the space provided to do so, on the budget form.

Budget is to be returned to the CAC with the signed *Standard Agreement with Grant Agreement Terms and Conditions* attached thereto.

While minor changes in the activity/budget are expected, if the Grantee wishes to modify the fundamental intentions of the activity/budget, prior written approval of the CAC is required.

If travel expenses are included in the approved budget, the State rules governing such expenses shall apply to the Grantee. All travel must be within the State of California.

In order to comply with the provisions of Government Code Section 19130, Grantee must seek prior approval from the CAC when a **single** printing project exceeds \$5,000. Contact the CAC Contract Analyst Lucy Mochizuki at (916) 322-6337, or email lmochizuki@caartscouncil.com, prior to entering into any contract for printing services if it exceeds \$5,000 to ensure compliance with this grant provision.

2. CAC GRANT RETURN DATE

Standard Agreement (three copies) shall be signed by the Grantee and returned to the California Arts Council within 30 days of the date postmarked.

3. PROJECT MANAGERS

The designated CAC Project Manager shall be the primary contact person during the performance of this grant with responsibility for facilitating communications and efficient interaction between the CAC and the Grantee. The Grantee shall also be responsible for designating a Project Manager. Should a change of the CAC's Project Manager or the Grantee's Project Manager become necessary, the other party shall be notified, in writing, 15 days prior to the change. The CAC Project Manager shall be Rob Lautz (916) 324-6617 or rlautz@caartscouncil.com.

4. COSTS AND PAYMENT

Grantee is required to sign and return the three copies of the *Standard Agreement (having reviewed the Grant Agreement Terms and Conditions on the CAC website), State of California Payee Data Record, 90% Invoice Form, and copies of Governor and legislative thank you letters*. Upon receipt of these documents and approval of the invoice, payment for 90% of the grant award will be sent to the Grantee. **The final 25% of the award will be held pending receipt of the California Arts Council/NEA Grants Activity Survey, accompanying 25% Invoice Form, and Final Report, which are to be submitted at the completion of the activities supported by this grant and no later than 30 days after the end of the grant period. Failure to comply with the Terms and Conditions of the grant agreement, may disallow the grant recipient from future funding consideration. (See Reporting Requirements, Section 6, below.)**

5. COST RECORDS

Grantee shall maintain complete, accurate and current records of all income, including obligations incurred with respect thereto. Such records, or copies of such records, shall be kept separate from other cost records. During the duration of the activity and for not less than three years after completion or termination of the activity, grantee shall make available for examination or audit any books, documents, papers or records pertaining to the activity, to the CAC. Upon request by the CAC, the grantee shall furnish at its own expense legible copies of materials deemed pertinent, within 10 working days from receipt of the request.

6. REPORTING REQUIREMENTS

See Appendix A, on the CAC website at <http://www.cac.ca.gov/files/forms.php> for reporting requirements.

7. MATERIALS DEVELOPED UNDER TERMS OF THE GRANT AGREEMENT

The CAC does not claim ownership, copyrights, royalties, or other claims to artwork produced as a result of a CAC grant. However, the CAC reserves the right to reproduce and use such materials for official, noncommercial purposes.

8. CAC ACKNOWLEDGEMENT

- a. In order to further the CAC's effort to create brand recognition for the arts in California, the placement of CAC logos is required on all printed and electronic matter (websites, programs, catalogs, postcards, posters, newsletters, leaflets, publications, etc.) The Grantee shall display the logos at a size and dimension that assures their visibility and the viewers' comprehension of them.

To download the logo on the web, go to: www.cac.ca.gov and

Click "Logos & Downloads"

For assistance in downloading our logo, call Webmaster Tom Bergmann at (916) 322-6582.



- b. The CAC also requires that the Grantee use the California Arts License Plate graphics on all relevant printed and electronic materials. The purpose of which is to assist the CAC with increasing public awareness of the California Arts License Plate and its support for arts in education and local arts programming.



To download the California Arts License Plate graphics off the web, go to: www.cac.ca.gov

Click "Logos & Downloads"

Use: "California Arts License Plate" logo

For assistance in downloading call Webmaster Tom Bergmann at (916) 322-6582.

- c. The CAC requires that the contractor shall include the NEA Logo on all printed and electronic materials related to this contract. You may follow the above instructions to download the National Endowment for the Arts logo.



- d. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after the determination was made.

This contract is valid and enforceable only if the United States Government makes sufficient funds available to the state for the fiscal year 2007-08 for the purposes of this program. In addition, the Congress may affect the provisions, terms, or funding of this contract in any manner subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute that exacts this contract.

The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

- e. Grantee is to acknowledge the receipt of funding by using the following phrase in all materials produced as a result of receiving this award, and in any interviews with the media or during events when appropriate: *"This activity is funded in part by the California Arts Council, a state agency, and the National Endowment for the Arts, a federal agency."*
- f. If published, recorded, or visual material (such as in a magazine, film, video, book or brochure) espouses an editorial viewpoint, Grantee must specify in the material that "ANY FINDINGS, OPINIONS, OR CONCLUSIONS CONTAINED HEREIN ARE NOT NECESSARILY THOSE OF THE CALIFORNIA ARTS COUNCIL OR THE NATIONAL ENDOWMENT FOR THE ARTS." (Note: It is not required that the notice appear in uppercase letters.)

9. SUBSCRIPTIONS

All Grantees are required to subscribe to the online CAC Update (including all members of the staff and board of directors, where applicable). In addition, it will be the Grantee's responsibility to advertise to its arts organization constituents how to subscribe to the CAC Update.

Instructions: On the Web, go to: www.cac.ca.gov

Click "News"

Click "CAC Updates"

Follow the subscription instructions as shown.

10. RESOLUTION OF DISPUTES

If Grantee disputes any action by the CAC arising under or out of the performance of this Grant, Grantee shall notify the CAC of the dispute in writing and request a claims decision. The CAC shall issue a decision within 30 days of the Grantee's notice. If the Grantee disagrees with the CAC's decision, the Grantee shall submit a formal claim to the Director of the CAC or to the Director's designee.

The decision of the Director or the Director's designee shall be final and conclusive. The decision may encompass facts, interpretations of the agreement, and determinations or applications of law. The decision shall be in writing following an opportunity for the Grantee to present oral or documentary evidence and arguments in support of the claim.

11. INDEPENDENT CONTRACTOR

Grantee shall not represent to any person, foundation, group, organization or government entity, whether employed by it or not, that it is acting as an agent for the State or that it is entitled in any way to act or incur obligations on behalf of the State.

12. TERMINATION

- a. It is mutually agreed that either party may cancel this Grant by giving 30-calendar days advance written notice.

- b. The CAC has the right to require Grantee to stop or suspend work by giving 30-calendar days prior written notice. Within 30 days of such termination, Grantee agrees to furnish the CAC with an itemized accounting of funds expended, obligated and remaining under this Grant.
- c. Failure to comply with the terms of this grant may lead to the cancellation of this grant.

13. NONDISCRIMINATION CLAUSE

During the performance of this Grant, Grantee and its subcontractors shall not unlawfully discriminate against, or harass, or allow harassment of any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (i.e. cancer), age (i.e. over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, 129900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Grant by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Grant.

14. STATEMENT OF COMPLIANCE

Grantee's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that it has, unless exempted, complied with the nondiscrimination program requirements of Government Code 12990 (a-f) and CCR, Title 2, Section 8103.

15. ASSIGNMENT OF TRANSFER

No part of the activity to this grant shall be assigned, sublet, or transferred, in whole or in part, without the prior written concurrence of the California Arts Council.

16. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

By signing this Grant Agreement, Grantee does swear under penalty of perjury that no more than one final unappeasable finding of contempt of court by a federal court has been issued against Grantee within the immediately preceding two-year period because of Grantee's failure to comply with an order of a federal court which orders Grantee to comply with an order of the National Labor Relation Board. (PCC 10296)

17. DRUG-FREE WORKPLACE

By signing this Grant Agreement, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 1. the dangers of drug abuse in the workplace;
 2. the person's or organization's policy of maintaining a drug-free workplace;
 3. any available counseling, rehabilitation, and employees assistance programs; and,
 4. penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed grant agreement will:
 1. receive a copy of the company's drug-free policy statement; and,
 2. agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the grant agreement or termination of the grant agreement or both and Grantee may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.
(GC 8350 et seq.)

18. AMERICANS WITH DISABILITIES ACT OF 1990

By signing this Grant Agreement, Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
(42 U.S.C. 12101 et seq.)

19. RECYCLING CERTIFICATION

The Grantee shall certify in writing under penalty of perjury, the minimum, if not, exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Grantee may certify that the product contains zero recycled content.

20. CONFLICT OF INTEREST

Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Grant Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC10410)

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411)

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject areas as the proposed contract within 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by Grantee shall render this Grant Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

21. UNION ORGANIZING

Grantee by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

- (1) Grantee will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- (2) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- (3) Grantee will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- (4) If Grantee incurs costs, or makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Grantee shall provide

- those records to the Attorney General upon request.
- (5) No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

22. CHILD SUPPORT COMPLIANCE ACT

The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 of Part 5 of Division 9 of the Family Code.

The Grantee, to best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

23. FUNDING CONTINGENCY

This Grant is valid and enforceable only if sufficient funds are made available to the CAC by the State for the fiscal year 2007-2008 for the purposes of this program.

24. FINAL APPROVAL

If required, this Grant is of no force or effect until approved by the State Department of General Services.

25. EXAMINATION AND AUDIT

Grantee shall be subject to the examination and audit by the CAC or the State Auditor for a period of three years after the termination or completion date stated in the Grant.

26. LABOR CODE/WORKERS' COMPENSATION

Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee affirms to comply with such provisions before commencing the performance of the work of this Grant Agreement. (Labor Code Section 3700)

27. GRANTEE NAME CHANGE

An amendment is required to change the Grantee's name as listed on this Grant Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

28. AIR OR WATER POLLUTION VIOLATION

Under the State laws, the Grantee shall not be:

1. in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
2. subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
3. finally determined to be in violation of provisions of federal law relating to air or water pollution.

29. VENDOR DATA RECORD FORM STD. 204:

This form must be completed by all contractors that are not another state agency or other government entity.

30. OTHER PROVISIONS

The Grantee is responsible for complying with all applicable local, State, and/or Federal laws associated with this grant.